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SENATE BILL NO. 1365

Offered January 12, 2011

Prefiled January 12, 2011

A BILL to amend the Code of Virginia by adding in Chapter 25 of Title 58.1 an article numbered 3, consisting of sections numbered 58.1-2532 through 58.1-2552, relating to tax credits against the state license tax on certain insurance companies.

Patron—McWaters

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 25 of Title 58.1 an article numbered 3, consisting of sections numbered 58.1-2532 through 58.1-2552, as follows:

Article 3.

License Tax Credit for Investment in Virginia Small Business Investment Companies.

§ 58.1-2532. Definitions.

As used in this article, unless the context requires a different meaning:

"Affiliate" of another person means:

1. A person who directly or indirectly:

a. Beneficially owns 15 percent or more of the outstanding voting securities or other voting interests of the other person, whether through rights, options, convertible interests, or otherwise; or

b. Controls or holds power to vote 15 percent or more of the outstanding voting securities or other voting interests of the other person;

2. A person with 15 percent or more of the outstanding voting securities or other voting interests of which are directly or indirectly:

a. Beneficially owned by the other person, whether through rights, options, convertible interests, or otherwise; or

b. Controlled or held with power to vote by the other person;

3. A partnership in which the other person is a general partner; or

4. An officer, director, employee, or agent of the other person, or an immediate family member of the officer, director, employee, or agent.

"Allocation date" means the date on which the participating investors in a Virginia small business investment company are allocated designated capital by the Director under this article.

"Designated capital" means an investment of cash by a participating investor in a Virginia small business investment company that fully funds the purchase price of an equity interest in the company or a qualified debt instrument issued by the Virginia small business investment company or a combination thereof.

"Director" means the Director of the Department of Business Assistance.

"License tax credit allocation claim" means a claim for allocation of license tax credits.

"Net profits on qualified investments" means the amount of money returned to the Virginia small business investment company in repayment of or in exchange for the Virginia small business investment company's qualified investment or investments in the qualified business in excess of the amount of such qualified investment or investments of capital contributions from its equity investors. Such number shall aggregate all of the Virginia small business investment company's qualified investments where gains on qualified investments are netted against losses on qualified investments.

"Participating investor" means an insurance company or other person that has state license tax liability, other than a title insurance company, that contributes designated capital pursuant to an allocation of license tax credits under this article.

"Person" means a natural person or entity, including a corporation, general or limited partnership, or trust or limited liability company.

"Profit share tax" means a tax in an amount equal to 50 percent of the net profits on qualified investments.

"Qualified business" means a business that, at the time of a Virginia small business investment company's first investment in the business:

1. Is headquartered in the Commonwealth and intends to remain in the Commonwealth after receipt of the investment by the Virginia small business investment company;

2. Has its principal business operations located in the Commonwealth and intends to maintain business operations in the Commonwealth after receipt of the investment by the Virginia small business

59 investment company;

60 3. Has agreed to use the qualified investment primarily to:

61 a. Support business operations in the Commonwealth, other than advertising, promotion, and sales
62 operations that may be conducted outside of the Commonwealth; or

63 b. In the case of a start-up company, establish and support business operations in the
64 Commonwealth, other than advertising, promotion, and sales operations that may be conducted outside
65 of the Commonwealth;

66 4. Has not more than 100 employees and:

67 a. Employs at least 80 percent of its employees in the Commonwealth; or

68 b. Pays at least 80 percent of its payroll to employees in the Commonwealth;

69 5. Is primarily engaged in:

70 a. Manufacturing, processing, or assembling products;

71 b. Conducting research and development; or

72 c. Providing services;

73 6. Is not primarily engaged in:

74 a. Retail sales (other than direct sales of products manufactured by such business);

75 b. Real estate development;

76 c. The business of insurance, banking, or lending; or

77 d. The provision of professional services provided by accountants, attorneys, or physicians; and

78 7. Is not a franchise of and has no financial relationship with a Virginia small business investment
79 company or any affiliate of a Virginia small business investment company prior to a Virginia small
80 business investment company's first qualified investment in the business.

81 8. Is classified as a qualified business at the time of the first qualified investment in the business will
82 remain classified as a qualified business and may receive continuing qualified investments from any
83 Virginia small business investment company. Continuing investments will constitute qualified investments
84 even though the business may not meet the definition of a qualified business at the time of such
85 continuing investments.

86 "Qualified debt instrument" means a debt instrument issued by a Virginia small business investment
87 company, at par value or a premium, that:

88 1. Has an original maturity date of at least four years after the date of issuance;

89 2. Has a repayment schedule that is not faster than a level principal amortization over four years;
90 and

91 3. Has no interest or payment features that allow for the prepayment of interest or are tied to the
92 profitability of the Virginia small business investment company or the success of its investments.

93 "Qualified distribution" means any distribution or payment by a Virginia small business investment
94 company in connection with:

95 1. The reasonable costs and expenses of forming, syndicating, managing, and operating the company,
96 provided that the distribution or payment is not made directly or indirectly to a participating investor,
97 including:

98 a. Reasonable and necessary fees paid for professional services, including legal and accounting
99 services, related to the formation and operation of the company; and

100 b. An annual management fee in an amount that does not exceed two percent of the designated
101 capital of the company; and

102 2. Any projected increase in federal or state taxes, including penalties and interest related to state
103 and federal income taxes, or to the equity owners of the company resulting from the earnings or other
104 tax liability of the company to the extent that the increase is related to the ownership, management, or
105 operation of the company.

106 "Qualified investment" means the investment of cash by a Virginia small business investment
107 company in a qualified business for the purchase of any debt, debt participation, equity, or hybrid
108 security of any nature or description, including a debt instrument or security that has the characteristics
109 of debt but that provides for conversion into equity or equity participation instruments such as options
110 or warrants.

111 "State license tax liability" means any liability incurred by any person under Article 1 (§ 58.1-2500
112 et seq.) of Chapter 25.

113 "Strategic investment area" means any population census tract in which:

114 1. The poverty rate for such tract is at least 20 percent, or

115 2. a. In the case of a tract not located within a metropolitan area, the median family income for
116 such tract does not exceed 80 percent of statewide median family income, or

117 b. In the case of a tract located within a metropolitan area, the median family income for such tract
118 does not exceed 80 percent of the greater of statewide median family income or the metropolitan area
119 median family income.

120 "Virginia small business investment company" means a partnership, corporation, or trust or limited

liability company, whether organized on a profit or not-for-profit basis, that: (i) has its principal office located or headquarters in Virginia and (ii) has as its primary business activity the investment of cash in qualified businesses and that is certified as meeting the criteria of this article.

§ 58.1-2533. Duties of Director; regulations.

A. The Director shall administer this article. No later than July 1, 2011, the Director, in consultation with the State Corporation Commission, shall publish guidelines related to the administration of this article. The guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

B. The Director may adopt regulations, in consultation with the State Corporation Commission, as necessary to implement this article. The regulations shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

§ 58.1-2534. Certification.

A. The Director shall establish the application procedures for Virginia small business investment companies.

B. An applicant must file an application on the form prescribed by the Director accompanied by a nonrefundable application fee of \$7,500. The application must include an audited balance sheet of the applicant, with an unqualified opinion from an independent certified public accountant, as of a date not more than 35 days before the date of the application.

C. To qualify as a Virginia small business investment company:

1. The applicant must have, at the time of application, an equity capitalization of at least \$500,000 in the form of unencumbered cash or cash equivalents;

2. At least two principals or persons employed to manage the funds of the applicant must have at least five years of experience in the venture capital or private equity industry; and

3. The applicant must satisfy any additional requirement imposed by the Director.

D. The Director shall review the application, organizational documents, and business history of each applicant and shall ensure that the applicant satisfies the requirements of this article.

E. Not later than the thirtieth day after the date an application is filed, the Director shall:

1. Issue the certification; or

2. Refuse to issue the certification and communicate in detail to the applicant the grounds for the refusal, including suggestions for the removal of those grounds.

§ 58.1-2535. Management by certain entities prohibited.

A. An insurance company, group of insurance companies, or other persons who may have state license tax liability or the affiliates of the insurance companies or such other persons may not, directly or indirectly:

1. Manage the operations of a Virginia small business investment company;

2. Beneficially own, whether through rights, options, convertible interests, or otherwise, more than 10 percent of the outstanding voting securities of a Virginia small business investment company; or

3. Control the direction of investments for a Virginia small business investment company.

B. Subsection A applies without regard to whether the insurance company or other person or the affiliate of the insurance company or other person is licensed by or transacts business in the Commonwealth.

C. This section does not preclude a participating investor, insurance company, or any other party from exercising its legal rights and remedies, including interim management of a Virginia small business investment company with respect to a Virginia small business investment company that is in default of its statutory or contractual obligations to the participating investor, insurance company, or other party.

§ 58.1-2536. Offering material used by a Virginia small business investment company.

Any offering material involving the sale of securities of the Virginia small business investment company must include the following statement: "By authorizing the formation of a Virginia small business investment company, the Commonwealth of Virginia does not endorse the quality of management or the potential for earnings of the company and is not liable for damages or losses to a participating investor in the company. Use of the word 'certified' in an offering does not constitute a recommendation or endorsement of the investment by the Director of the Department of Business Assistance. If applicable provisions of law are violated, the Commonwealth of Virginia may require forfeiture of unused license tax credits and repayments of used license tax credits."

§ 58.1-2537. Requirements for continuance of certification.

A. To continue to be certified, a Virginia small business investment company shall make qualified investments according to the following schedule:

1. Before the second anniversary of an allocation date, a Virginia small business investment company must have made qualified investments in an amount cumulatively equal to at least 35 percent of the designated capital allocated on such date, of which at least 15 percent shall be in strategic investment areas; and

2. Before the third anniversary of an allocation date, a Virginia small business investment company

182 must have made qualified investments in an amount cumulatively equal to at least 50 percent of the
183 designated capital allocated on such date, of which at least 15 percent shall be in strategic investment
184 areas.

185 B. The aggregate cumulative amount of all qualified investments made by the Virginia small business
186 investment company after its allocation date shall be considered in the computation of the percentage
187 requirements under this article. Any proceeds received from a qualified investment may be invested in
188 another qualified investment and count toward any requirement in this article with respect to
189 investments of designated capital.

190 C. Nothing in this article shall limit an insurance company's ownership of nonvoting equity interests
191 in a Virginia small business investment company.

192 D. A business that is classified as a qualified business at the time of the first investment in the
193 business by a Virginia small business investment company remains classified as a qualified business and
194 may receive follow-on investments from any Virginia small business investment company. Except as
195 provided by this section, a follow-on investment made under this section is a qualified investment even
196 though the business may not meet the definition of a qualified business at the time of the follow-on
197 investment. A follow-on investment does not qualify as a qualified investment if, at the time of the
198 follow-on investment, the qualified business no longer has its principal business operations in the
199 Commonwealth.

200 E. A qualified investment may not be made at a cost to a Virginia small business investment
201 company greater than 15 percent of the total designated capital of the company at the time of
202 investment.

203 F. If, before the ninetieth day after the date that a Virginia small business investment company
204 makes an investment in a qualified business, the qualified business moves its principal business
205 operations from the Commonwealth, the investment may not be considered a qualified investment for
206 purposes of the percentage requirements under this article.

207 G. A Virginia small business investment company shall invest any designated capital not invested in
208 qualified investments only in the following:

- 209 1. Cash deposited with a federally insured financial institution;
- 210 2. Certificates of deposit in a federally insured financial institution;
- 211 3. Investment securities that are obligations of the United States or its agencies or instrumentalities
212 or obligations that are guaranteed fully as to principal and interest by the United States;
- 213 4. Debt instruments rated at least "A" or its equivalent by a nationally recognized credit rating
214 organization, or issued by, or guaranteed with respect to payment by, an entity whose unsecured
215 indebtedness is rated at least "A" or its equivalent by a nationally recognized credit rating organization,
216 and which indebtedness is not subordinated to other unsecured indebtedness of the issuer or the
217 guarantor;
- 218 5. Obligations of the Commonwealth or any political subdivision of the Commonwealth; or
- 219 6. Any other investments approved in advance and in writing by the Director.

220 H. If, within five years after an allocation date, a Virginia small business investment company has
221 not invested at least 80 percent of the designated capital allocated on such date in qualified investments,
222 of which at least 15 percent shall be in strategic investment areas, the Virginia small business
223 investment company shall not be permitted to pay management fees.

224 I. If, within seven years after an allocation date, a Virginia small business investment company has
225 not invested at least 100 percent of the designated capital allocated on such date in qualified
226 investments, of which at least 15 percent shall be in strategic investment areas, the Virginia small
227 business investment company shall not be permitted to pay management fees.

228 § 58.1-2538. Evaluation of business by Director.

229 A. A Virginia small business investment company may, before making an investment in a business,
230 request from the Director a written opinion as to whether the business in which it proposes to invest is
231 a qualified business and is located in a strategic investment area.

232 B. The Director shall, not later than the fifteenth business day after the date of the receipt of a
233 request pursuant to subsection A, determine whether the business meets the definition of a qualified
234 business, and notify the Virginia small business investment company of the determination and an
235 explanation of its determination. Alternatively, the director may notify the Virginia small business
236 investment company that an additional 15 days will be needed to review and make the determination.

237 C. If the Director fails to notify the Virginia small business investment company with respect to the
238 proposed investment within the period specified by subsection B, the business in which the company
239 proposes to invest shall be considered to be a qualified business or be located in a strategic investment
240 area, if applicable.

241 § 58.1-2539. Reports to Director; audited financial statement.

242 A. As soon as practicable after the receipt of designated capital, each Virginia small business
243 investment company shall report to the Director :

1. The name of each participating investor from whom the designated capital was received, including the participating investor's insurance license tax identification number;

2. The amount of each participating investor's investment of designated capital and license tax credits;

3. The date on which the designated capital was received; and

4. Whether the qualified investments have been made in strategic investment areas.

B. Not later than January 31 of each year, each Virginia small business investment company shall report to the Director:

1. The amount of the company's designated capital invested in qualified investments at the end of the preceding year;

2. Whether or not the company has invested more than 15 percent of its total designated capital in any one business without specific approval of the Director;

3. Each qualified investment that the company made during the preceding year and, with respect to each qualified investment, the number of employees of the qualified business at the time the qualified investment was made; and

4. Any other information required by the Director.

C. Not later than June 1 of each year, the company shall provide to the Director an annual audited financial statement that includes the opinion of an independent certified public accountant.

§ 58.1-2540. Renewal.

A. Not later than January 31 of each year, each Virginia small business investment company shall pay a nonrefundable renewal fee of \$5,000 to the Director. If a Virginia small business investment company fails to pay its renewal fee on or before that date, the company must pay, in addition to the renewal fee, a late fee of \$5,000 to continue its certification.

B. Notwithstanding subsection A, a renewal fee is not required within six months of the date on which the company's certification is issued under § 58.1-2534.

§ 58.1-2541. Distributions; repayment of debt; Building Future Jobs Fund.

A. A Virginia small business investment company may make a qualified distribution or repay equity contributions to a nonparticipating investor at any time. To make a distribution or payment, other than a qualified distribution or to repay equity to a nonparticipating investor, a company must have made qualified investments in an amount cumulatively equal to 100 percent of its designated capital.

1. At any time that a Virginia small business investment company makes distributions, other than qualified distributions or distributions representing repayments of capital contributions to its equity investors who are not participating investors, the Virginia small business investment company shall pay the Commonwealth the profit share tax for deposit in the Building Future Jobs Fund, established pursuant to subsection E.

2. The amount of any payment of profit share tax required by subdivision 1 shall be reduced by the job creation credit established pursuant to subsection F.

B. A company may make repayments of principal and interest on its indebtedness without any restriction, including repayments of indebtedness of the company on which participating investors earned license tax credits.

C. If, within 24 months of the date of a qualified investment in a qualified business, the business relocates its principal business operations to another state during the term of the Virginia small business investment company's investment in the business, the cumulative amount of qualified investments made by the Virginia small business investment company for purposes of satisfying the requirements of subsection A is reduced by the amount of the Virginia small business investment company's qualified investments in the business that has relocated. This shall not apply if the business demonstrates that it has returned its principal business operations to the Commonwealth not later than the ninetieth day after the date of its relocation.

D. If a business in which a qualified investment is made that was also in a strategic investment area relocates its principal business operations to another strategic investment area in the Commonwealth, the investment shall remain a qualified investment located in a strategic investment area. If a business in which a qualified investment is made that was also in a strategic investment area relocates its principal business operations to another part of the Commonwealth that is not a strategic investment area within 24 months of the date of the investment by the Virginia small business investment company, the investment shall remain a qualified investment, but shall not be considered made in a strategic investment area. In such event, the Virginia small business investment company shall have 180 days to comply with subsections A, H, and I of § 58.1-2537, if such relocation results in noncompliance.

E. There is hereby created in the state treasury a special permanent, nonreverting, interest-bearing fund to be known as the Building Future Jobs Fund, hereinafter referred to as the "Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of (i) any revenues resulting from the profit share percentage paid to the Commonwealth pursuant to subsection A; (ii) any

305 other moneys appropriated to it by the General Assembly; and (iii) such other sums as may be made
306 available to it from any other source, public or private, all of which shall be credited to the Fund. Any
307 moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall remain in
308 the Fund and shall not revert to the general fund. All amounts credited to the Fund shall be used for
309 the creation of jobs throughout the Commonwealth by means of economic development.

310 F. For the purposes of this section, a job creation credit shall be equal to the tax revenue gain from
311 the creation of new full-time equivalent employment positions at qualified businesses or the support of
312 full-time equivalent employment positions at qualified businesses due to investment by a Virginia small
313 business investment company. Follow-on investment into the qualified business from other sources,
314 whether concurrent or over the following five-year period after the initial investment by the Virginia
315 small business investment company shall also be considered an investment by the Virginia small
316 business investment company for the purposes of this subsection. Such calculation of full-time equivalent
317 employment positions shall be annual and may be adjusted for seasonal employment. A full-time
318 equivalent employment position that is deemed to be supported by an investment of a Virginia small
319 business investment company shall include any employment of the company where qualified investment
320 equals or exceeds 40 percent of the value of the total outstanding voting securities or other voting or
321 management interests of the qualified business. For the purposes of this subsection, "tax revenue gain"
322 means an amount equal to \$5,000 per new or supported full-time equivalent employment position per
323 year. The tax revenue gain shall be adjusted in proportion to the percentage by which the position or
324 positions exceed or do not exceed the average wage in the county of employment, or in the metropolitan
325 statistical area of employment, if one exists.

326 G. The calculations required for credit under subsection F shall be done by an independent,
327 nonaffiliated, licensed accountant. The costs of such accounting shall be the responsibility of the
328 Virginia small business investment company seeking the credit.

329 § 58.1-2542. Annual review; decertification.

330 A. The Director shall conduct an annual review of each Virginia small business investment company
331 to:

332 1. Ensure that the company continues to satisfy the requirements of this article and that the company
333 has not made any investment in violation of this article; and

334 2. Determine the eligibility status of its qualified investments.

335 B. The cost of the annual review shall be paid by each Virginia small business investment company
336 according to a reasonable fee schedule adopted by the Director.

337 C. If the Director determines that a company is not in compliance with subsection A of § 58.1-2537,
338 the Director shall notify the officers of the company in writing that the company may be subject to
339 decertification 120 days after the date of mailing of the notice, unless the deficiencies are corrected and
340 the company returns to compliance.

341 D. The Director may decertify a Virginia small business investment company, after opportunity for
342 hearing, if the Director finds that the company is not in compliance with subsection A of § 58.1-2537 at
343 the end of the period established by subsection C. Decertification under this subsection is effective on
344 receipt of notice of decertification by the company. The Director shall notify any appropriate state
345 agency of the decertification.

346 § 58.1-2543. Administrative penalty.

347 A. The Director may impose an administrative penalty on a Virginia small business investment
348 company that violates this article.

349 B. The amount of the penalty may not exceed \$25,000, and each day a violation continues or occurs
350 is a separate violation for the purpose of imposing a penalty. The amount of the penalty shall be based
351 on:

352 1. The seriousness of the violation, including the nature, circumstances, extent, and gravity of the
353 violation;

354 2. The economic harm caused by the violation;

355 3. The history of previous violations;

356 4. The amount necessary to deter a future violation; and

357 5. Efforts to correct the violation.

358 § 58.1-2544. Recapture and forfeiture of license tax credits; decertification of company.

359 A. Decertification of a Virginia small business investment company may cause the recapture of
360 license tax credits previously claimed and the forfeiture of future license tax credits to be claimed by
361 participating investors with respect to the company, as follows:

362 1. Decertification of a company on or before the third anniversary of its allocation date causes the
363 recapture of any license tax credit previously claimed and the forfeiture of any future license tax credit
364 to be claimed by a participating investor with respect to the company;

365 2. For a company that has met the requirements for continued certification under subdivisions A 1
366 and A 2 of § 58.1-2537 and is subsequently decertified, any license tax credit that has been or will be

taken by a participating investor is not subject to recapture or forfeiture under this section.

B. The Director shall send written notice to the address of each participating investor whose license tax credit is subject to recapture or forfeiture, using the address shown on the last license tax filing. The State Corporation Commission shall collect any amounts specified in such notice of recapture in the same manner as an assessment of license tax.

§ 58.1-2545. Indemnity agreements and insurance authorized.

A Virginia small business investment company may agree to indemnify, or purchase insurance for the benefit of, an investor for losses resulting from the recapture or forfeiture of license tax credits under § 58.1-2544.

§ 58.1-2546. License tax credit.

A. A participating investor who makes an investment of designated capital shall, in the year of investment, earn a vested credit against state license tax liability equal to 80 percent of the participating investor's investment of designated capital, subject to the limits imposed by this article. A participating investor may take up to one-sixth of the vested license tax credit in any taxable year beginning on or after January 1, 2013, including quarterly payments.

B. The credit to be applied against state license tax liability in any one year may not exceed the state license tax liability of the participating investor for the taxable year. Any unused credit against state license tax liability may be carried forward indefinitely until the license tax credits are used.

C. A participating investor claiming a credit against state license tax liability earned through an investment in a company is not required to pay any additional retaliatory tax levied under Chapter 25 (§ 58.1-2500 et seq.) as a result of claiming that credit.

§ 58.1-2547. License tax credit allocation claim form.

A. A license tax credit allocation claim must be prepared and executed by a participating investor on a form provided by the Director. The Virginia small business investment company must file the claim with the Director. The license tax credit allocation claim form must include an affidavit of the participating investor under which the participating investor becomes legally bound and irrevocably committed to make an investment of designated capital in a Virginia small business investment company in the amount allocated even if the amount allocated is less than the amount of the claim, subject only to the receipt of an allocation under § 58.1-2549.

B. A participating investor may not claim a license tax credit under § 58.1-2546 for an investment that has not been funded, even if the participating investor has committed to fund the investment.

§ 58.1-2548. Total limit on credits.

A. The total amount of designated capital for which license tax credits may be allowed under this article for all years in which license tax credits are allowed is \$100 million.

B. The total amount of designated capital for which license tax credits may be allowed for all participating investors under this article may not exceed the amount that would entitle all participating investors in Virginia small business investment companies to take total credits of one-sixth of the \$100 million total amount allowed pursuant to subsection A in a year.

C. A Virginia small business investment company and its affiliates may not file license tax credit allocation claims in excess of the maximum amount of designated capital for which license tax credits may be allowed as provided in this section.

§ 58.1-2549. Pro rata allocation of credits.

A. The Director shall accept license tax credit allocation claims within 90 days of the effective date of this act.

B. If the total license tax credits claimed by all participating investors exceeds the total limits on license tax credits established by subsection A of § 58.1-2548, the Director shall allocate the total amount of license tax credits allowed under this article to participating investors in Virginia small business investment companies on a pro rata basis in accordance with this section.

C. The pro rata allocation for each participating investor shall be the product of:

1. A fraction, the numerator of which is the amount of the license tax credit allocation claim filed on behalf of the participating investor and the denominator of which is the total amount of all license tax credit allocation claims filed on behalf of all participating investors; and

2. The total amount of designated capital for which license tax credits may be allowed under this article.

D. Not later than 30 days after accepting license tax credit allocation claims, the Director shall notify each Virginia small business investment company of the amount of tax credits allocated to each participating investor. Each Virginia small business investment company shall notify each participating investor of their license tax credit allocation.

E. If a Virginia small business investment company does not receive an investment of designated capital equaling the amount of license tax credits allocated to a participating investor for which it filed a license tax credit allocation claim before the end of the tenth business day after the date of receipt of

428 *notice of allocation, the company shall notify the Director by overnight common carrier delivery service*
429 *and that portion of capital allocated to the participating investor shall be forfeited. Within 30 days the*
430 *Director shall reallocate the forfeited capital among the participating investors in the other Virginia*
431 *small business investment companies that originally received an allocation so that the result after*
432 *reallocation is the same as if the initial allocation under this section had been performed without*
433 *considering the license tax credit allocation claims that were subsequently forfeited.*

434 *F. The maximum amount of designated capital for which license tax credit allocation may be allowed*
435 *on behalf of any one participating investor and its affiliates, whether by one or more Virginia small*
436 *business investment companies, may not exceed 25 percent of the maximum aggregate amount available*
437 *under subsection A of § 58.1-2548.*

438 *§ 58.1-2550. Impact of tax credits claimed by a participating investor on insurance rates.*

439 *A participating investor is not required to reduce the amount of license tax included by the investor*
440 *in connection with ratemaking for any insurance contract written in the Commonwealth because of a*
441 *reduction in the investor's license tax derived from the credit granted under this article.*

442 *§ 58.1-2551. Transferability of credit.*

443 *A. The Director, in consultation with the State Corporation Commission, shall adopt regulations to*
444 *facilitate the transfer or assignment of license tax credits by participating investors. The regulations*
445 *shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).*

446 *B. A participating investor shall not transfer or assign, agree to transfer, or agree to sell or assign*
447 *license tax credits until 180 days from the date on which the participating investor invested designated*
448 *capital. After 180 days from the date of investment, a participating investor, or subsequent transferee,*
449 *may transfer credits based upon rules adopted by the Director to facilitate such transfers.*

450 *C. Any tax credits recaptured under this article remain the liability of the participating investor that*
451 *actually applied the credit toward its tax liability.*

452 *D. The transfer or assignment of a license tax credit does not affect the schedule for taking the*
453 *license tax credit under this article.*

454 *§ 58.1-2552. Secrecy of information.*

455 *Notwithstanding any other provision of law, the Department of Business Assistance and the State*
456 *Corporation Commission shall be authorized to share such information as is necessary to carry out the*
457 *provisions of this article.*

458 **2. That the insurance license tax credits provided in this act shall be paid from the portion of the**
459 **license tax revenues that are deposited into the general fund of the state treasury.**

460 **#**